

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of Fixed)	RM-10586
and Mobile Broadband Access, Educational and Other)	
Advanced Services in the 2150-2162 and 2500-2690)	
MHz Bands)	
)	
Part 1 of the Commission's Rules - Further Competitive)	WT Docket No. 03-67
Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable Multipoint)	MM Docket No. 97-217
Distribution Service and the Instructional Television)	
Fixed Service to Engage in Fixed Two-Way)	
Transmissions)	
)	
Amendment of Parts 21 and 74 of the Commission's Rules)	WT Docket No. 02-68
With Regard to Licensing in the Multipoint Distribution)	RM-9718
Service and in the Instructional Television Fixed Service)	
for the Gulf of Mexico)	
)	
Promoting Efficient Use of Spectrum Through)	WT Docket No. 00-230
Elimination of Barriers to the Development of)	
Secondary Markets)	

COMMENTS OF SPRINT CORPORATION

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Executive Summary

Sprint makes the following points in these comments:

1. The Commission must ensure that the timing of any auctions involving BRS and EBS spectrum does not interfere with transitioning to the new BRS/EBS bandplan. To ensure that the auctioning of existing unassigned BRS BTA licenses, EBS “white space,” and BRS and EBS licenses that are not ultimately transitioned does not adversely affect the transitioning of the BRS/EBS band, the Commission should:

- Auction existing unassigned BRS BTA licenses as soon as is feasible; and
- Not auction any other BRS and/or EBS spectrum that is or becomes available for auctioning until at least thirty (30) months after the effective date of any order on reconsideration of the *BRS R&O*.

2. The Commission should adopt substantial service for the BRS/EBS band. Specifically, the Commission should apply the substantial service performance standard and “safe harbors” that have been adopted under Part 27 of the Commission’s rules to the BRS/EBS band, along with the safe harbors recently adopted by the Commission for rural areas. The Commission should confirm the availability of case-by-case showings of substantial service for service deployments that are not covered by a safe harbor. Adoption of this standard would maximize BRS/EBS licensee flexibility to provide services in response to market demand. Demonstration of substantial service should be required at license renewal, except that initial demonstrations of substantial service should not be required until five years after transitions have been completed.

3. The Commission should not decide how to license BRS/EBS spectrum in the Gulf region at this time. If, however, the Commission moves forward on establishing a Gulf Service area, it must also provide interference protections for land-based BRA and EBS operations near the Gulf coastline. Specifically, if the Commission moves forward, it should establish the demarcation line of the Gulf service area at the border of the Protected Service Areas of land-based operations near the coastline or twelve nautical miles from the coastline, whichever is greater.

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COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") submits these reply comments in response to the Commission's Further Notice of Proposed Rule Making regarding further changes to the recently revamped Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") service rules and spectrum assignments.¹

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) ("*BRS R&O*" and "*FNPRM*").

I. INTRODUCTION

Sprint, a licensee and lessee of BRS/EBS spectrum, supports the Commission's efforts to revamp the BRS/EBS spectrum and service rules. The *BRS R&O*, with certain exceptions², represents a major and positive step towards making BRS and EBS spectrum viable for advanced broadband services that will benefit the American public.

II. THE COMMISSION SHOULD HOLD SEPARATE AUCTIONS FOR BRS AND EBS "WHITE SPACE" SPECTRUM AND BRS AND EBS SPECTRUM THAT IS RETURNED

The auctioning of existing unassigned BRS licenses, EBS "white space," and BRS and EBS licenses that are not ultimately transitioned must be timed so that markets can be transitioned in an orderly and predictable fashion. As explained below, the Commission should auction existing unassigned BRS Basic Trading Area ("BTA") licenses as soon as is feasible, so that licensees acquiring such licenses can work them into their existing transition plans. All other BRS and EBS spectrum that is or becomes available for auctioning should not be auctioned prior to thirty (30) months after the effective date of any order on reconsideration of the *BRS R&O*.

A. The Commission Should Auction Existing Unassigned BRS BTA Licenses As Soon As Feasible.

The Commission should immediately auction existing unassigned BRS BTA authorizations that are being held by the Commission. Expeditious auctioning of these licenses would aid the licensees acquiring such licenses by providing enough time to incorporate the licenses into any existing transition plans they may be developing.

² See Petition for Reconsideration of Sprint Corporation, WT Docket No. 03-66 (filed Jan. 10, 2005), seeking reconsideration of various rules adopted in the *BRS R&O*. See also Petition for Reconsideration of The Wireless Communications Association International, Inc., WT Docket No. 03-66 (filed Jan. 10, 2005).

Because existing incumbent site-based BRS licensees already are responsible for their own transitions whether or not there is a BTA licensee, they would not be adversely affected by the expeditious auctioning of these licenses. It is likely that incumbent EBS licensees also would benefit from such action, since the winner of the BRS BTA license almost certainly would act as the proponent for the license area, expeditiously facilitating the transition of EBS licensees to the new BRS/EBS bandplan.

B. All Other BRS And EBS Spectrum That Is Or Becomes Available For Auctioning Should Not Be Auctioned Before Thirty Months After The Effective Date Of Any Order On Reconsideration Of The *BRS R&O*.

In the *BRS R&O* the Commission gave BRS/EBS licensees three years from the effective date of the *BRS R&O* to initiate transitions.³ In the *FNPRM* the Commission requested comment on whether the availability of unassigned, cleared and/or relinquished spectrum for auction should be triggered by that effective date.⁴ Sprint notes that petitions for reconsideration of the *BRS R&O* are being filed concurrently with the *FNPRM* comments that may significantly alter the scope of the transition process. Accordingly, to account for the delays and rule revisions that may result from addressing these petitions, the Commission should ensure that the auctioning of BRS and/or EBS licenses that are not (i) included in Initiation Plans or (ii) self-transitioned in cases where no proponent emerges (discussed below) is not commenced prior to thirty (30) months after the effective date of any order on reconsideration of the *BRS R&O*.

EBS white space should not be auctioned until after the self-transition notification deadline (discussed below) has passed. The EBS white space is composed primarily of

³ See *BRS R&O* at ¶ 83.

⁴ See *FNPRM* at ¶¶ 271-273.

scattered channels in minor markets. Auctioning this spectrum before the transition period has expired would saddle BRS licensees with the added costs of accounting for and transitioning these licenses. Further, such auction could materially complicate or undo a transition plan developed by a proponent, if the auction were to close as the proponent was in the process of finalizing or initiating its transition plan.⁵ The same rationale applies to BRS/EBS spectrum that is relinquished for bidding credits – this spectrum should be auctioned after the transition periods have expired.

BRS spectrum has been geographically licensed as BTAs for almost a decade. FCC and other licensing databases are set up to process BRS license information based upon BTAs, and operators and licensees have developed interference and other interoperating relationships along BTA lines. Accordingly, the auctioning of available BRS/EBS spectrum should be conducted according to BTA license areas. Major Economic Areas (“MEA”) have no relative relationship to BTAs, and introducing BRS and/or EBS licenses on an MEA basis would unnecessarily complicate their incorporation into the existing BRS/EBS licensing framework. Any entity interested in acquiring this spectrum on an MEA basis can acquire contiguous BTAs at auction or through the secondary market.

C. The Commission Should Provide A Self-Transition Option.

Any BRS or EBS licensee in a market for which no Initiation Plan has been filed by the applicable deadline should be provided the option of self-transitioning itself within sixty (60) days after such deadline. Licensees electing to self-transition should be

⁵ If the Commission elects to auction EBS white space before the self-transition notification deadline, however, it must make clear that the entities acquiring such spectrum in the auction will not be entitled either to replacement downconverters or migration of programming as part of the transition or self-transition process.

required to notify the Commission electronically within five days of the expiration of the sixty day self-notification period. Licensees that neither are covered by an Initiation Plan nor elect to self-transition should be required to cease operating sixty (60) days after the applicable Initiation Plan deadline, as opposed to the 18-month period specified in the *BRS R&O*.⁶ With respect to licensees that decline transitioning (pursuant to an Initiation Plan or self-transitioning) in favor of bidding credits, the Commission must ensure that its rules and policies permitting BRS and EBS licensees to relinquish their licenses in exchange for bidding credits cannot be used by such licensees as a means to void or circumvent any obligations they may have under existing spectrum leases with BRS/EBS lessees. As Sprint explained in its reply comments to the notice of proposed rulemaking which led to the *BRS R&O*, “termination of existing leases by the Commission would amount to retroactive interference with Commission-sanctioned business activities and would inequitably upset the reliance expectations of operators and licensees alike.”⁷

III. THE COMMISSION SHOULD ADOPT A SUBSTANTIAL SERVICE PERFORMANCE STANDARD

Sprint agrees with the Commission’s tentative conclusion that a substantial service performance standard that provides for case-by-case showings of substantial service, coupled with “safe harbors” designed to provide licensees with a measure of certainty in the renewal process, would be best suited for the new, flexible BRS/EBS regulatory regime and would provide “the strongest incentive to licensees to develop and

⁶ See *BRS R&O* at ¶ 81.

⁷ Reply Comments of Sprint Corporation, WT Docket No. 03-66 (filed Oct. 23, 2003) at 20. As Sprint further explained, such action also would run counter to the Commission’s historic policies of refraining from interference with private contracts, and would chill future participation in lease arrangements and other secondary market activities involving MDS/ITFS spectrum. See *id.* at 19-23.

deploy new services.”⁸ As the Commission has noted, the substantial service approach “provide[s] licensees greater flexibility to determine how best to implement their business plans based on criteria demonstrating actual service to end users, rather than on a showing of whether a licensee passes a certain proportion of the relevant population.”⁹ In contrast, as the *FNPRM* acknowledges, fixed, inflexible construction benchmarks “hinder widespread deployment of wireless services and do not always reflect elements of service such as cost or, more importantly, populations served.”¹⁰ Sprint further agrees with the Commission’s conclusion that adopting a substantial service performance standard for BRS/EBS operations also would further the Commission’s goal of regulatory parity with other flexible use services for which this standard has been adopted¹¹ – the number of which is growing rapidly as the Commission shifts towards increasing reliance on the market to dictate services.¹²

⁸ *FNPRM* at ¶ 321.

⁹ *Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, 17 FCC Rcd 9980, 10010 (2002) (“*Government Transfer Band Order*”). See also, *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, Report and Order*, Report and Order, 18 FCC Rcd 25162, 25192 (2003) (“*AWS Order*”).

¹⁰ *FNPRM* at ¶ 324.

¹¹ *Id.* at ¶ 322.

¹² See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, First Report and Order, 15 FCC Rcd 476 (2000). See also, *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2001); *Government Transfer Band Order*, 17 FCC Rcd 9980 (2002); *AWS Order*, 18 FCC Rcd 25162 (2003); *Rulemaking to Amend Parts 1, 2, 21, and 25 Of The Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 12 FCC Rcd 12545, 12659-61 (1997), affirmed *Melcher v. FCC*, 134 F.3d 1143, 1161-62 (D.C. Cir. 1998); *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934 (2000).

As discussed below, the substantial service standard for the BRS/EBS band should include safe harbors and case-by-case showings of substantial service to cover those deployments that are not covered by a safe harbor. The ability to tailor substantial service showings to particular services – which is the hallmark of the substantial service standard – is particularly beneficial for BRS and EBS operations, as these systems likely will vary depending upon market demand, may involve spectrum gathered from multiple BRS and/or EBS licensees, and may require licensees in some circumstances to utilize some of their licensed spectrum as guard bands. While safe harbors provide for administrative efficiency, they also can be inflexible with respect to defining services in the public interest. Accordingly, both safe harbors and the availability of case-by-case substantial service performance showings should be provided for BRS/EBS licensees.

A. The Commission Should Apply The Part 27 Substantial Service And Safe Harbor Standards To BRS/EBS Spectrum, Along With Safe Harbors Reflecting The Development Of The BRS/EBS Band.

In defining the substantial service standard that would apply to BRS/EBS operations, the Commission should adhere to the basic definition already contained in Section 27.14(a) of the Commission's rules – specifically, “service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.” This definition should be broad enough to capture the new, innovative and potentially specialized services likely to be deployed by BRS and EBS licensees. Sprint further agrees with the Commission that utilizing safe harbors as a means for licensees to demonstrate compliance with the substantial service standard is practical and will provide regulatory certainty for licensees. Specifically, the Commission should adopt the safe harbor benchmarks it has already adopted for WCS:

(i) for a fixed service, the construction of four permanent links per one million people within the licensed service area; and (ii) for a mobile service, a demonstration of coverage to 20 percent of the population of the licensed service area.¹³ To confirm, case-by-case showings of substantial service, however, also should be made available.

The Commission also should allow BRS/EBS licensees to demonstrate substantial service using the rural safe harbors recently adopted by the Commission in the *Rural Service R&O*.¹⁴ Specifically, for mobile wireless services, the substantial service requirement would be met if the licensee provides coverage to at least 75 percent of the geographic area of at least 20 percent of the “rural areas” within its licensed area.¹⁵ For fixed wireless services, the substantial service requirement would be met if the licensee constructs at least one end of a permanent link in at least 20 percent of the number of “rural areas” within its licensed area. Licensees should be deemed to satisfy these construction requirements through lease agreements when such arrangements satisfy the conditions set forth in the *Secondary Markets 2nd R&O*.¹⁶

Compliance with the performance safe harbors or case-by-case showings should be based upon the overall system deployed in a given market and the totality of spectrum used within that system. As indicated above, in putting their systems together, operators

¹³ See *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service* (“WCS”), Report and Order, 12 FCC Rcd 10785, 10843-44 at ¶ 113 (1997).

¹⁴ *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078 (2004) (“*Rural Service R&O*”).

¹⁵ See *id.* at ¶ 79. A “rural area” for purposes of this rule is a county with a population density of 100 persons per square mile or less, based upon the most recent Census data. *Id.*

¹⁶ *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503 (2004) (“*Secondary Markets 2nd R&O*”).

are likely to utilize BRS and EBS channels from various sources within a given market, and may be required in some circumstances to utilize some of this licensed spectrum as guard bands. Assessing performance compliance upon the individual channels that make up the system, thus, may not tell the story of whether the channel is being utilized to provide service. Accordingly, in cases where a licensee demonstrates that its spectrum is leased by the operator of a multi-channel system composed of spectrum licensed under multiple call signs, that licensee should be regarded as having provided substantial service if the multi-channel system utilizing such licensee's leased spectrum satisfies a safe harbor.¹⁷

B. Demonstration Of Substantial Service Should Generally Be Required At License Renewal, Provided That All Initial Demonstrations Of Substantial Service Should Not Be Required Until Five Years After Transitions Have Been Completed.

In general, BRS and EBS licensees should be subject to substantial service review at the time of license renewals. However, licensees will require time to implement transition plans, and licensees transitioning to a new technology pursuant to the rules adopted under this proceeding might not be able to demonstrate substantial service if the renewal date of the license occurs before or relatively close to the time it transitions to the new band plan.¹⁸ The public benefits associated with overhauling the BRS/EBS rules

¹⁷ In addition, with respect to satisfying the safe harbor benchmarks for BRS BTA licenses, the coverage of BRS stations owned and operated by the BRS BTA licensee as well as BRS stations owned and operated by the BRS BTA licensee's affiliates should be counted towards determining whether a specific safe harbor benchmark has been met.

¹⁸ The Commission, for example, recognized this problem with respect to the transition to two-way MDS systems, concluding: "We believe that it would be inequitable to require authorization holders to follow build-out criteria applicable to rules governing wireless cable operations since many of them are now providing high-speed broadband services." FCC Public Notice, *In The Matter Of Extension Of The Five-Year Build-Out Period For BTA Authorization Holders In The Multipoint Distribution Service*, DA 01-1072, ¶ 6 (April 25, 2001).

cannot be realized by mechanically applying license renewal timelines developed for the old BRS/EBS rules. Such action would only encourage licensees to maintain old technologies for fear that their planned new service offerings would not be sufficiently developed in time to meet the substantial service renewal standard at their renewal date. Accordingly, to accommodate transition to the new BRS/EBS bandplan and provide BRS/EBS licensees a fair opportunity to provide substantial service under the new rules, BRS and EBS licenses having renewal dates that occur prior to the date that is five years after the filing of the post-transition notification applicable to that license should be granted renewal, provided that the licensee demonstrates substantial service no later than five years after the filing of the post-transition notification.

IV. ANY GULF OF MEXICO AUTHORIZATION MUST INCLUDE INTERFERENCE PROTECTIONS FOR LAND-BASED OPERATIONS

Sprint reiterates its concerns regarding the Commission's proposal to establish BRS service in the Gulf region. As Sprint explained in its earlier comments and reply comments, the unique propagation characteristics of radio signals over large bodies of water renders any RF activity in the Gulf region a potential interference threat to land-based operations.¹⁹ This phenomenon and the problems it presents was expressly recognized by the Commission when it first proposed a Gulf region in the *Gulf NPRM*.²⁰ Both Sprint and the Coalition proposed measures that would need to be applied to any Gulf region service rules to protect land-based BRS operations. No other party except

¹⁹ See Comments of Sprint Corporation, WT Docket No. 03-66 (filed Sept. 8, 2003) at 15-16; Reply Comments of Sprint Corporation, WT Docket No. 03-66 (filed Oct. 23, 2003) at 31.

²⁰ See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and the Instructional Television Fixed Service for the Gulf of Mexico*, Notice of Proposed Rulemaking, 17 FCC Rcd 8446, 8463-65 at ¶¶ 39-40.(2002) ("Gulf NPRM").

Sprint and the Coalition commented on this subject, and the absence of other comments suggests that there is no reason for the Commission to examine BRS/EBS spectrum availability or licensing issues for that region.

As Sprint has maintained, however, if the Commission elects to move forward with the establishment of a Gulf service region, it should include in any Gulf region service rules the specific protections identified in Sprint and the Coalition's earlier comments. Specifically, the Commission must ensure that any Gulf service area is subject to the existing circular protected service areas awarded to incumbent MDS and ITFS stations that are near the Gulf coastline and does not encroach upon the BTAs that were auctioned in 1996. In addition, the Commission must ensure that the interference protections provided to the Gulf service area do not encumber or prevent Sprint and other providers of BRS/EBS broadband services near the coastline from fully serving their authorized service areas. In particular, the Commission should establish the demarcation line of the Gulf service area at the border of the Protected Service Areas of land-based operations near the coastline or twelve nautical miles from the coastline, whichever is greater, as initially proposed by the Commission in the *Gulf NPRM*.²¹ The twelve nautical mile boundary limit has already been adopted by the Commission for flexible use services regulated under Part 27 of its rules.²²

²¹ See *Gulf NPRM* at 8450.

²² See 47 C.F.R. § 27.6 (a)(2).

V. CONCLUSION

Sprint urges the Commission to follow the recommendations set forth above for auctioning BRS and EBS spectrum, adopting a substantial service standard for BRS/EBS spectrum, and establishing BRS service in the Gulf region.

Respectfully submitted,

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